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MEMORANDUM OF LAW

DATE: August 15, 1997

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Disclosure Requirements for Committees Formed to Support or Oppose Recall

BACKGROUND

This past spring, four committees filed statements of organization indicating that they either support or oppose the recall of two Councilmembers. On June 24, the Fair Political Practices Commission (FPPC) informally advised you in writing that committees formed to support or oppose a recall effort are required to file, at a minimum, semi-annual campaign statements. In re Abdelnour, FPPC Inf. Adv. Ltr. I-97-223 (June 24, 1997), copy attached.

The letter also advised you that, if a recall election is called, these committees must file pre-election statements within the appropriate time limits.

State law also requires ballot measure committees to file quarterly campaign statements during each six-month period in which the measure is not being voted on. Because the City of San Diego treats recall campaigns as candidate campaigns, not ballot measure campaigns, the Commission in its June 24 letter also advised you to seek the opinion of the City Attorney whether these committees are required to file quarterly statements.

You note that the FPPC's advice in a June 10 letter to Kathy Angus, one of the recall proponents, appears to contradict their advice to you in the June 24 letter. In the June 10 letter, the FPPC stated that no group supporting or opposing a recall is required to file any disclosure statements before a notice of intent is published. In the June 24 letter to you, they stated without qualification that committees formed to support or oppose a recall effort are required to file, at a minimum, semi-annual campaign statements. Therefore, you have asked for the City Attorney's opinion to clarify disclosure obligations of recall committees in this City.

QUESTIONS PRESENTED

1. Are committees that have formed to support or oppose recall of a City Councilmember required to file semi-annual campaign disclosure forms?
2. Are committees that have formed to support or oppose recall of a City Councilmember required to file quarterly disclosure statements?
3. Are committees that have formed to support or oppose recall of a City Councilmember required to file pre-election statements?

SHORT ANSWERS

1. Yes, state and local law require committees to file semi-annual statements if they have "qualified," that is, they have raised \$1000 in contributions under state law or \$500 in contributions under local law. There is no exception for recall committees that have "qualified."
2. No, because this City treats recall elections as candidate elections, the quarterly filing requirement for ballot measure elections does not apply.
3. Yes, but the time for filing pre-election statements is triggered by particular election dates and, in the present instance, there is no date certain for any particular recall elections. The time for filing will only become set, and can become known, only after a proponent of a recall effort follows the procedures in the City's recall ordinance and obtains enough signatures on a recall petition to require an election.

ANALYSIS

The City of San Diego treats a recall election as a form of candidate election. San Diego Municipal Code (SDMC) § 27.2903(b)(4), (k); San Diego City Attorney Memorandum of Law

No. 97-9, at 9, dated Mar. 20, 1997. In contrast, the California Political Reform Act (Act) treats recall of an officeholder as a ballot measure procedure. In re Cohen, FPPC Inf. Adv. Ltr. I-96-364 (Feb. 18, 1997); In re Burgess, FPPC Inf. Adv. Ltr. I-94-393 (Feb. 9, 1995); In re Roberti, FPPC Priv. Adv. Ltr. A-89-358 (July 14, 1989). State law does not preempt the City's treatment of recall elections as candidate elections for purposes of contribution limits. Preemption does not occur where, as here, there is no conflict between the two laws. San Diego City Attorney Memorandum of Law No. 97-9; In re Angus, FPPC Priv. Adv. Ltr. A-97-326 (July 22, 1997) (copy attached); In re Angus, FPPC Priv. Adv. Ltr. A-97-173 (June 10, 1997) (copy attached). Although a recall election does not begin until a notice of intent to circulate a recall petition is published, fundraising in support or opposition to a recall effort may begin before that time. San Diego City Attorney Memorandum of Law No. 97-9; accord In re Angus, FPPC Priv. Adv. Ltr. A-97-326. As discussed below, whether a recall committee supporting a recall effort has published a notice of intent is irrelevant to the question whether committees formed for the purpose of recall are required to file disclosure forms and, if so, when.

This City has adopted state campaign disclosure requirements. "Each candidate and committee shall file campaign statements in the time and manner required by the Political Reform Act of 1974 as amended" SDMC § 27.2931.

The Act defines the term "committee" to mean "any person or combination of persons who directly or indirectly does any of the following: (a) Receives contributions totaling one thousand dollars (\$1000) or more in a calendar year." Cal. Gov't Code § 82013. The City defines the term "committee" more stringently to mean "any person or combination of persons who for political purposes directly or indirectly: (1) Receives contributions totaling five hundred dollars (\$500) or more in a calendar year." SDMC § 27.2903(d).

If a person or group of persons collects \$1000 or more in contributions, under state law they "qualify" as a committee and must file a statement of organization. Cal. Gov't Code § 84101. That is, they must disclose their committee status. This same disclosure requirement is triggered for committees formed for political purposes in this City, but the disclosure requirement is triggered by a lesser contribution amount. Under longstanding interpretations of the Municipal Code, if a person or group of persons collect \$500 or more in contributions in this City, under local law they "qualify" as a "committee" and must file a statement of organization. SDMC § 27.2931; Cal. Gov't Code § 84101(a).

In the present case, you ask whether a committee supporting or opposing a recall effort is required to file any or all of the semi-annual, quarterly, or pre-election statements.

Semi-annual statements

California Government Code section 84200 requires elected officers, candidates, and committees to file semi-annual statements no later than July 31 and January 31 of each year, if they have “qualified,” that is, those that have received \$1000 in contributions under state law or \$500 in contributions under local law. There are three listed exceptions to this statute¹, but none of them applies to recall committees. The semi-annual filing requirement applies both to candidate elections and ballot measure elections in state law. Assuming the committees formed in San Diego to support or oppose a recall effort have “qualified,” state law clearly required them to file semi-annual statements by July 31, and, if they have not done so, they are delinquent.

Quarterly statements

In addition to the semi-annual statements required by California Government Code section 84200(a), ballot measure committees must also file quarterly reports. Cal. Gov’t Code § 84202.3. San Diego treats recall committees as candidate committees, not ballot measure committees. Therefore, committees formed in San Diego to support or oppose a recall effort are not required to file quarterly reports.

Pre-election statements

In addition to the semi-annual statements required by California Government Code section 84200, elected officers, candidates and committees are required to file pre-election statements. Cal. Gov’t Code § 84200.5. There is no exception for recall committees. The time for filing pre-election statements is triggered by the date of the particular election. In the present instance there is no date certain at this time for any particular recall elections. The time for filing

¹These three exceptions are: (1) candidates who file a declaration stating they have received or spent less than \$1000 in the relevant time period; (2) elected officers whose salaries are less than \$100 per month and certain judges and judicial officers if they have received no contributions and made no expenditures in the relevant time period; and (3) certain judges who are not listed on the ballot for reelection or recall, if those judges meet other criteria.

will only become set and known once a proponent of a recall effort follows the procedures in the City's recall ordinance and obtains enough signatures on a recall petition to require an election. Once a date is set or can be ascertained, we invite you to ask the City Attorney when those pre-election filing statements will become due.

CASEY GWINN, City Attorney

By

Cristie C. McGuire
Deputy City Attorney

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Attachments

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